

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

THOMAS S. MCCLOSKEY and  
KEVIN P. MCCLOSKEY,

Plaintiffs

v.

1:04-CV-11015-RCL

ROBERT S. MUELLER, III,  
Director of the Federal Bureau of  
Investigation; THE FEDERAL  
BUREAU OF INVESTIGATION;

WILLIAM H. ANDERSON,  
Individually and as an employee of  
the Federal Bureau of

Investigation; THE UNITED  
STATES OF AMERICA; and

GARY LEE SAMPSON,  
Defendants.

**DEFENDANT'S UNOPPOSED MOTION FOR  
EXTENSION OF TIME TO RESPOND TO COMPLAINT**

Defendants, Robert S. Mueller, III, in his official capacity as Director of the Federal Bureau of Investigation ("the FBI"), William H. Anderson in his official position as an FBI employee at the time in question, the FBI, and the United States of America (the "Federal Defendants"), through their attorney, David V. Kirby, Acting United States Attorney for the District of Vermont<sup>1</sup>, hereby move for an extension of time to respond to Plaintiffs' Amended Complaint.<sup>2</sup> The Federal Defendants request an

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<sup>1</sup> The United States Attorney's Office for the District of Massachusetts has been recused from this matter. The United States Attorney's Office for the District of Vermont will represent Robert S. Mueller, the FBI, William Anderson in his official capacity, and the United States in this matter.

<sup>2</sup> The original Complaint in this action was filed on May 20, 2004. That Complaint was served on the United States Attorney's Office in the District of Massachusetts on May 27, 2004. A motion to amend the Complaint and an Amended Complaint were filed on May 25, 2004. These pleadings were not served on the United States. The motion was granted via electronic order on May 26, 2004. The Amended Complaint changed only the name of the non-federal defendant in the case and did not add substantive allegations. Nonetheless, the Amended

extension of time of sixty days to September 24, 2004. In support of its motion, the Federal Defendants submit the following facts:

1. This case has engendered conflict issues that have only recently been resolved. Plaintiffs' wrongful death complaint asserts that the Federal Defendants are liable under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680 for alleged negligence, and further, violated constitutional rights under 42 U.S.C. § 1983. They allege that the murder of their decedent, Philip McCloskey, by Defendant Gary Sampson, was proximately caused by conduct or omissions of the FBI in responding to a phone call by Sampson prior to the murder. The United States Attorney's Office in the District of Massachusetts prosecuted Sampson. That office also prosecuted Defendant William Anderson for his actions during an internal investigation concerning Sampson's phone call. Therefore, following receipt of the Complaint, the United States Attorney's Office for the District of Massachusetts sought recusal from this case. On July 7, 2004, the Executive Office For United States Attorneys (EOUSA) approved the request for recusal and assigned the matter to the United States Attorney's Office for the District of Vermont.

2. The United States has sixty days from the date of service to respond to a complaint in a civil case. Fed. R. Civ. P. 12(a)(3)(A). When an amended complaint is served, the United States must respond within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever is the longer period, unless the court orders otherwise. Fed. R. Civ. P. 15(a). In this case, the Complaint was served on the United States Attorney's Office on May 27, 2004. Without an extension of time, Defendant's response would be due July 26, 2004. The Amended Complaint has yet to be served, but service of that pleading is expected to occur shortly.

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Complaint has made the original Complaint obsolete. Counsel for Plaintiffs advised recently that the Amended Complaint will be served on the United States Attorney's Office in the District of Vermont in the near future.

3. The United States Attorney's Office for the District of Vermont received a copy of the Complaint on July 7, 2004. The undersigned counsel was appointed Special Attorney in this case on July 13, 2004 authorizing her to represent the United States in the District of Massachusetts. The United States Attorney's Office in Vermont will need sufficient time to review the materials in the administrative files and conduct some preliminary investigation in order to provide a meaningful response to the Amended Complaint.

4. At first glance, it appears that a number of the allegations may be subject to dismissal on jurisdictional grounds. Defense counsel will need time to acquaint herself with the factual material in various agency files, research the legal issues and determine whether dismissal on all claims against the United States, the FBI, Robert Mueller, and William Anderson in his official capacity is appropriate or whether partial dismissal only can be achieved.<sup>3</sup>

5. Plaintiffs' counsel indicated on July 14, 2004 that he has no objection to the requested extension of time. William Anderson also does not object to the requested extension of time. Defendant Gary Sampson, who is presently incarcerated in federal prison, was not contacted regarding consent on this motion.

Wherefore, the Federal Defendants respectfully request an extension of time until September 24, 2004 to respond to Plaintiffs' Complaint.

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<sup>3</sup> William Anderson has requested representation by the Department of Justice as to all claims asserted against him in his individual capacity. That request is currently being reviewed within the Department of Justice. The undersigned counsel represents Anderson in his official capacity only.

Dated at Burlington, in the District of Vermont, this 15<sup>th</sup> day of July, 2004.

Respectfully submitted,

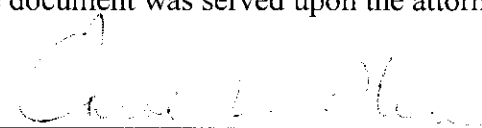
UNITED STATES OF AMERICA,  
ROBERT S. MUELLER, III,  
THE FEDERAL BUREAU OF INVESTIGATION,  
and WILLIAM ANDERSON in his official capacity,

DAVID V. KIRBY  
Acting United States Attorney

By:   
CAROL L. SHEA  
Special Attorney  
Chief, Civil Division  
United States Attorney's Office  
P.O. Box 570  
Burlington VT 05402-0570  
(802) 951-6725

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by regular mail on July 15, 2004.

  
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Carol L. Shea, Special Attorney